

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY GRACE O’CONNOR,

Plaintiff,

v.

INDEPENDENT HEALTH ASSOCIATION, INC.,
INDEPENDENT HEALTH BENEFITS
CORPORATION, INC.,

Defendants.

**DEFENDANTS’ ANSWER
TO COMPLAINT**

Civil Action No.
1:21-cv-00689-GWC

Defendants Independent Health Association, Inc. (“IHA”) and Independent Health Benefits Corporation, Inc.’s (“IHBC”) (collectively, “Defendants”), by and through their attorneys, Nixon Peabody LLP, hereby answer the allegations of the Complaint as follows:

**As to section with heading
“PRELIMINARY STATEMENT”**

1. Paragraph 1 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants admit that Plaintiff was a plan participant, and deny the remaining allegations in said paragraph.

2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.

**As to section with heading
“JURISDICTION AND VENUE”**

3. Defendants do not dispute that, based on the facts as alleged by Plaintiff in Paragraph 3 of the Complaint, jurisdiction appears to be proper in this Court.

**As to section with heading
“PARTIES”**

4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

7. To the extent the allegations contained in Paragraph 7 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit A, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit A by Plaintiff with regard to this lawsuit.

8. Paragraph 8 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

9. Paragraph 9 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants state that IHA is the sole stockholder of IHBC. Defendants deny the remaining allegations contained in said paragraph.

10. Defendants admit that IHA policies and procedures applied to IHBC operations, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 10 of the Complaint.

**As to section with heading
“STATEMENT OF FACTS”
“FlexFit Plan”**

11. To the extent the allegations contained in Paragraph 11 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit A, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit A by Plaintiff with regard to this lawsuit.

12. Paragraph 12 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint contains no factual allegations and, therefore, does not require a response.

16. Paragraph 16 of the Complaint contains no factual allegations and, therefore, does not require a response.

17. Paragraph 17 of the Complaint contains no factual allegations and, therefore, does not require a response.

18. Defendants admit that FIKA was not a participating provider under the FlexFit Plan.

19. Paragraph 19 of the Complaint contains no factual allegations and, therefore, does not require a response.

20. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

**As to section with heading
“Coverage Authorizations”**

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. To the extent the allegations contained in Paragraph 24 of the Complaint refer to the content of the writings attached to the Complaint as Exhibits A and B, those writings speak for themselves. Defendants otherwise deny any characterization of the content of Exhibits A and B by Plaintiff with regard to this lawsuit.

25. To the extent the allegations contained in Paragraph 25 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit C, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit C by Plaintiff with regard to this lawsuit.

26. To the extent the allegations contained in Paragraph 26 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit D, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit D by Plaintiff with regard to this lawsuit.

27. To the extent the allegations contained in Paragraph 27 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit D, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit D by Plaintiff with regard to this lawsuit.

28. Paragraph 28 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit A, that writing speaks for itself. Defendants otherwise deny the allegations contains in said paragraph, including any characterization of the content of Exhibit A by Plaintiff with regard to this lawsuit.

29. Paragraph 29 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

30. To the extent the allegations contained in Paragraph 30 of the Complaint refer to the content of the writings attached to the Complaint as Exhibits C and D, those writings speak for themselves. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibits C and D by Plaintiff with regard to this lawsuit.

31. Paragraph 31 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibits C and D, those writings speak for themselves. Defendants otherwise deny the allegations contained in said paragraph as well as the footnote to said paragraph, including any characterization of the content of Exhibits C and D by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

32. To the extent the allegations contained in Paragraph 32 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit D, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit D by Plaintiff with regard to this lawsuit.

33. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. To the extent the allegations contained in Paragraph 35 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit D, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit D by Plaintiff with regard to this lawsuit.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants admit that several phone calls were made by IH with regard to Plaintiff's claim(s), including the phone calls referenced in Paragraph 37 of the Complaint. Defendants otherwise deny any characterization of the content and context of said phone calls as alleged in this paragraph by Plaintiff with regard to this lawsuit.

38. Defendants admit that several phone calls were made by IH with regard to Plaintiff's claim(s), including the phone call referenced in Paragraph 38 of the Complaint. Defendants otherwise deny any characterization of the content and context of said phone call as alleged in this paragraph by Plaintiff with regard to this lawsuit.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. To the extent the allegations contained in Paragraph 40 of the Complaint refer to a state statute, the content of said state statute speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of said statute by Plaintiff with regard to this lawsuit and any emphasis added by Plaintiff in said paragraph.

41. To the extent the allegations contained in Paragraph 41 of the Complaint refer to a state statute, the content of said state statute speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of said

statute by Plaintiff with regard to this lawsuit and any emphasis added by Plaintiff in said paragraph.

42. To the extent the allegations contained in Paragraph 42 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit F or state statutes, those writing speak for themselves. Defendants otherwise deny any characterization of the content of Exhibit F and said statutes by Plaintiff with regard to this lawsuit.

43. To the extent the allegations contained in Paragraph 43 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit G, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit G by Plaintiff with regard to this lawsuit.

44. To the extent the allegations contained in Paragraph 44 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit G, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit G by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

45. To the extent the allegations contained in Paragraph 45 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit H, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit H by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

46. Paragraph 46 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph, including any emphasis added by Plaintiff in said paragraph.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Paragraph 49 of the Complaint contains on or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit I, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit I by Plaintiff with regard to this lawsuit.

50. To the extent the allegations contained in Paragraph 50 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit I, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit I by Plaintiff with regard to this lawsuit.

51. To the extent the allegations contained in Paragraph 51 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit I, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit I by Plaintiff with regard to this lawsuit.

52. Paragraph 52 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

53. To the extent the allegations contained in Paragraph 53 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit I, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit I by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

54. Paragraph 54 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit I, that writing speaks for itself.

Defendants otherwise deny any characterization of the content of Exhibit I by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. To the extent the allegations contained in Paragraph 56 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

57. To the extent the allegations contained in Paragraph 57 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

58. To the extent the allegations contained in Paragraph 58 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

59. To the extent the allegations contained in Paragraph 59 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit and any emphasis added by Plaintiff in said paragraph.

60. To the extent the allegations contained in Paragraph 60 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself.

Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

61. Paragraph 61 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Paragraph 63 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit, including any emphasis added by Plaintiff in said paragraph.

64. Paragraph 64 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writing attached to the Complaint as Exhibit J, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any

characterization of the content of Exhibit J by Plaintiff with regard to this lawsuit and any emphasis added by Plaintiff in said paragraph.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants admit that several phone calls were made by IH with regard to Plaintiff's claim(s), including the phone call referenced in said paragraph. Defendants otherwise deny any characterization of the content and context of said phone call as alleged in this paragraph by Plaintiff with regard to this lawsuit.

69. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 of the Complaint relating to how far along in her pregnancy Plaintiff was when she received the letter attached to the Complaint as Exhibit J or what Plaintiff's intentions were regarding "community of care." Defendants otherwise deny the remaining allegations contained in said paragraph.

70. Paragraph 70 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

71. Paragraph 71 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

72. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants admit the allegations contained in Paragraph 74 of the Complaint.

75. To the extent the allegations contained in Paragraph 75 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit K, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit K by Plaintiff with regard to this lawsuit.

76. Paragraph 76 of the Complaint contains one or more legal conclusions that require no response. Further, to the extent the allegations contained in said paragraph refer to the content of the writings attached to the Complaint as Exhibits C and K, those writings speak for themselves. Defendants otherwise deny any characterization of the content of Exhibits C and K by Plaintiff with regard to this lawsuit.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. To the extent the allegations contained in Paragraph 79 of the Complaint refer to the content of the writing attached to the Complaint as Exhibit K, that writing speaks for itself. Defendants otherwise deny the allegations contained in said paragraph, including any characterization of the content of Exhibit K by Plaintiff with regard to this lawsuit.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint.

82. Defendants incorporate by reference their responses to Paragraphs 1 through 81 of the Complaint as if fully set forth herein.

83. Paragraph 83 of the Complaint contains one or more legal conclusions that require no response.

84. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint.

85. Paragraph 85 of the Complaint contains one or more legal conclusions that require no response.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint.

90. Paragraph 90 contains one or more legal conclusions that require no response.

91. Paragraph 91 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

92. Paragraph 92 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

93. Paragraph 93 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

94. Paragraph 94 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

95. Paragraph 95 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

96. Paragraph 96 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

97. Paragraph 97 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

98. Paragraph 98 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

99. Paragraph 99 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

100. Paragraph 100 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

101. Paragraph 101 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

**As to “FIRST CAUSE OF ACTION”
“Violations of ERISA § 1132(a)(1)(B) Benefit Claims”**

102. Defendants incorporate by reference their responses to Paragraphs 1 through 101 of the Complaint as if fully set forth herein.

103. Paragraph 103 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

104. Paragraph 104 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint.

107. Paragraph 107 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

108. Paragraph 108 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

109. Paragraph 109 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

110. Paragraph 110 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “SECOND CAUSE OF ACTION”
“Breach of Fiduciary Duty”**

111. Defendants incorporate by reference their responses to Paragraphs 1 through 110 of the Complaint as if fully set forth herein.

112. Paragraph 112 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

113. Paragraph 113 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

114. Paragraph 114 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

115. Paragraph 115 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

116. Paragraph 116 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

117. Paragraph 117 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “THIRD CAUSE OF ACTION”
“Enforcement of Procedural Requirements”**

118. Defendants incorporate by reference their responses to Paragraphs 1 through 117 of the Complaint as if fully set forth herein.

119. Paragraph 119 of the Complaint contains one or more legal conclusions that require no response.

120. Paragraph 120 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

121. Paragraph 121 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

122. Paragraph 122 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

123. Paragraph 123 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “FOURTH CAUSE OF ACTION”
“Promissory Estoppel under ERISA § 502(a)(3), Federal Common Law
and/or New York State Common Law”**

124. Defendants incorporate by reference their responses to Paragraphs 1 through 123 of the Complaint as if fully set forth herein.

125. Defendants deny the allegations contained in Paragraph 125 of the Complaint.

126. Paragraph 126 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

127. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint, and therefore deny them.

128. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint, and therefore deny them.

129. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint, and therefore deny them.

130. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 130 of the Complaint, and therefore deny them.

131. Paragraph 131 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

132. Paragraph 132 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

133. Defendants deny the allegations contained in Paragraph 133 of the Complaint, and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “FIFTH CAUSE OF ACTION”
“Breach of Contract – Violations of Insurance Law Sections 4303 & 4324”**

134. Defendants incorporate by reference their responses to Paragraphs 1 through 133 of the Complaint as if fully set forth herein.

135. To the extent the allegations contained in Paragraph 135 of the Complaint refer to a state statute, the content of said state statute speaks for itself. Defendants otherwise deny any characterization of the content of said statute by Plaintiff with regard to this lawsuit.

136. Paragraph 136 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

137. Defendants deny the allegations contained in Paragraph 137 of the Complaint.

138. Paragraph 138 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

139. Paragraph 139 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

140. Paragraph 140 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

141. Paragraph 141 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

142. Paragraph 142 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

143. Paragraph 143 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “SIXTH CAUSE OF ACTION”
“Breach of Covenant of Good Faith and Fair Dealing”**

144. Defendants incorporate by reference their responses to Paragraphs 1 through 143 of the Complaint as if fully set forth herein.

145. Paragraph 145 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

146. Paragraph 146 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

147. Paragraph 147 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “SEVENTH CAUSE OF ACTION”
“Violations of General Business Law Section 349”**

148. Defendants incorporate by reference their responses to Paragraphs 1 through 147 of the Complaint as if fully set forth herein.

149. Paragraph 149 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

150. Defendants deny the allegations contained in Paragraph 150 of the Complaint and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “EIGHTH CAUSE OF ACTION”
“Violation of N.Y. Insurance Law § 3224-a”**

151. Defendants incorporate by reference their responses to Paragraphs 1 through 150 of the Complaint as if fully set forth herein.

152. To the extent the allegations contained in Paragraph 152 of the Complaint refer to a state statute, the content of said state statute speaks for itself. Defendants otherwise deny any characterization of the content of said state statute by Plaintiff with regard to this lawsuit.

153. Paragraph 153 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations in said paragraph.

154. Paragraph 154 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

**As to “NINTH [*sic*] CAUSE OF ACTION”
“Unjust Enrichment”**

155. Defendants incorporate by reference their responses to Paragraphs 1 through 154 of the Complaint as if fully set forth herein.

156. Defendants deny the allegations contained in Paragraph 156 of the Complaint.

157. Defendants deny the allegations contained in Paragraph 157 of the Complaint.

158. Paragraph 158 of the Complaint contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph.

The unnumbered paragraph following Paragraph 158 contains one or more legal conclusions that require no response. To the extent a response is required, Defendants deny the allegations contained in said paragraph and deny that Plaintiff is entitled to the relief set forth in said paragraph.

Further, responding to the unnumbered paragraph beginning “WHEREFORE,” Defendants deny each and every allegation contained in such paragraph and all eight sub-parts thereof.

Defendants further deny each and every allegation not specifically admitted or denied herein and further deny that Plaintiff is entitled to the judgment requested.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses without assuming any burden of production or proof that it would not otherwise bear.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are governed by ERISA, which provides exclusive remedies for plaintiff's claims. Any state law or common law claims asserted by plaintiff are barred and preempted by ERISA and should be stricken.

THIRD AFFIRMATIVE DEFENSE

The claims asserted by Plaintiff in the in the Complaint are barred by virtue of the fact that under the Plan, Defendants have discretionary authority to determine benefit eligibility and to construe the terms of the Plan.

FOURTH AFFIRMATIVE DEFENSE

The claims asserted by Plaintiff in the Complaint are barred by virtue of the fact that Defendants' determination was not arbitrary or capricious or an abuse of discretion; instead, any such determination was correct, reasonable, made in accordance with the terms of the Plan, and based on substantial evidence.

FIFTH AFFIRMATIVE DEFENSE

Alternatively, to the extent this Court determines that Defendants' decision was arbitrary

and capricious, the proper remedy is a remand to Defendants for further review.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff lacks constitutional Article III standing to assert the claims alleged in the Third Cause of Action of the Complaint because plaintiff has not alleged and cannot show a particularized and concrete injury or harm resulting from the alleged procedural statutory violations of ERISA alleged in the Third Cause of Action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent Plaintiff failed to satisfy and/or exhaust any and all administrative, jurisdictional, and/or procedural prerequisites to suit.

EIGHTH AFFIRMATIVE DEFENSE

Defendants raise all terms and conditions of the Plan as defenses herein.

NINTH AFFIRMATIVE DEFENSE

Defendants discharged their duties in the interest of the Plan participants and beneficiaries.

TENTH AFFIRMATIVE DEFENSE

Defendants conducted a full and fair review of Plaintiff's claim for benefits under the Plan.

ELEVENTH AFFIRMATIVE DEFENSE

Any and all actions taken by Defendants with regard to Plaintiff were made in good faith.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred, in whole or in part, by the principles/doctrines of unclean hands, waiver, estoppel, and laches.

RESERVATION OF RIGHTS

Defendants reserve the right to assert such additional affirmative defenses as may appear and prove applicable during the course of this action.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury on all claims and issues so triable, and on all of their defenses thereto.

WHEREFORE, Defendants respectfully request that the Court dismiss Plaintiff's Complaint with prejudice; and award costs, disbursements and such other relief, including reasonable attorneys' fees, as the Court may deem just and proper.

DATED: Buffalo, New York
July 26, 2021

NIXON PEABODY LLP

By: /s/ Susan C. Roney

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